

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND	)	
COMPANY,	)	
	)	
Plaintiff,	)	C.A. No.: 07-346 SLR
	)	
v.	)	
	)	JURY TRIAL DEMANDED
MECHANICAL INTEGRITY, INC.,	)	
	)	
Defendant.	)	

**ANSWER OF DEFENDANT, MECHANICAL INTEGRITY, INC.,**  
**TO COMPLAINT WITH AFFIRMATIVE DEFENSES**

1. Denied. By way of further answer, after reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

2. Admitted.

3. Admitted.

4. Admitted.

5. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required. By way of further answer, the contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

6. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

7. Admitted, upon information and belief.

8. It is admitted that DuPont and Mechanical Integrity, Inc. entered into a contract for inspection of chloroform piping at the Louisville plant. The contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

9. It is admitted that DuPont and Mechanical Integrity, Inc. entered into a contract for inspection of chloroform piping at the Louisville plant. The contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

10. It is admitted that DuPont and Mechanical Integrity, Inc. entered into a contract for inspection of chloroform piping at the Louisville plant. The contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

11. Denied as stated.

12. Admitted.

13. It is admitted that Mechanical Integrity, Inc. issued an inspection report following its inspection. The report is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

14. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

15. It is admitted that DuPont entered into another contract with Mechanical Integrity, Inc. in November of 2005. The contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

16. Denied as stated.

17. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

18. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

19. Denied. By way of further answer, after reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial.

20. Denied.

21. Denied.

22. Denied.

### **COUNT I**

23. Answering Defendant hereby incorporates its responses to paragraphs 1 through 22 herein by reference.

24. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

25. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

26. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial. By way of further answer, the allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

### **COUNT II**

27. Answering Defendant hereby incorporates its responses to paragraphs 1 through 26 herein by reference.

28. Denied. The contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

33. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial. By way of further answer, the allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

### **COUNT III**

34. Answering Defendant hereby incorporates its responses to paragraphs 1 through 33 herein by reference.

35. Denied.

36. Denied. By way of further answer, the contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

37. Denied.

38. Denied.

39. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

40. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial. By way of further answer, the allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

#### **COUNT IV**

41. Answering Defendant hereby incorporates its responses to paragraphs 1 through 40 herein by reference.

42. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required. By way of further answer, the contract is a written document which speaks for itself and Plaintiff's characterization thereof is specifically denied.

43. Denied.

44. Denied.

45. Denied. By way of further answer, the allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

46. Denied. The allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

47. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained herein and same are deemed denied with strict proof thereof demanded at the time of trial. By way of further answer, the allegations contained herein are denied as conclusions of law to which no responsive pleadings are required.

WHEREFORE, Answering Defendant respectfully requests that this cause of action against it be dismissed with prejudice.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred in whole or in part by the assumption of a known risk and/or contributory negligence.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred in whole or in part by the provisions of the Kentucky Comparative Negligence Statute, KRS §411.182.

**FOURTH AFFIRMATIVE DEFENSE**

If Plaintiff sustained the damages as alleged in their Complaint, which is herein strictly denied, then they were caused by the acts or omissions of entities/individuals over which/whom Answering Defendant had no control nor legal duty to control.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims precluded in whole or in part by the terms of the relevant contract.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are precluded in whole or in part by the Economic Loss Doctrine.

**SEVENTH AFFIRMATIVE DEFENSE**

At all times material hereto, Answering Defendant acted with due care and proper care under the circumstances.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate their damages.

**NINTH AFFIRMATIVE DEFENSE**

Venue is improper for this Court.

**TENTH AFFIRMATIVE DEFENSE**

This court lacks jurisdiction over the persons to the within action.

**ELEVENTH AFFIRMATIVE DEFENSE**

All allegations pertaining to employment, workmen, servant, agency, supervision and/or control are specifically denied.

WHEREFORE, Answering Defendant respectfully requests that this cause of action against it be dismissed with prejudice.

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr., Esquire

Louis J. Rizzo, Jr., Esquire

Delaware State Bar I.D. No. 3374

1001 Jefferson Plaza, Suite 202

Wilmington, DE 19801

(302) 652-3611

Attorney for Defendant Mechanical Integrity, Inc.

Dated: July 25, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND	)	
COMPANY,	)	
	)	
Plaintiff,	)	C.A. No.: 07-346
	)	
v.	)	
	)	
MECHANICAL INTEGRITY, INC.,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify on this 25th day of July, 2007 a two true and correct copy of the Answer of Defendant, Mechanical Integrity, Inc., to Complaint with Affirmative Defenses has been served electronically and by first class mail, postage prepaid, upon the following:

Kathleen Furey McDonough, Esquire  
Sarah E. DiLuzio, Esquire  
Potter Anderson & Corroon LLP  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
P.O. Box 951  
Wilmington, DE 19899

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr., Esquire

Louis J. Rizzo, Jr., Esquire  
Delaware State Bar I.D. No. 3374  
1001 Jefferson Plaza, Suite 202  
Wilmington, DE 19801  
(302) 652-3611  
Attorney for Defendant Mechanical Integrity, Inc.

Dated: July 25, 2007



(REV. 07/89)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

<b>I (a) PLAINTIFFS</b>  <b>E. I. DUPONT DE NEMOURS AND COMPANY</b> <b>b)</b> COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>New Castle County</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b>  <b>MECHANICAL INTEGRITY, INC.</b> COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED												
<b>(c)</b> ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) <b>Kathleen Furey McDonough (ID #2395) (302) 984-6000</b> <b>Sarah E. DiLuzio (ID #4085)</b> <b>Potter Anderson &amp; Corroon</b> <b>P.O. Box 951</b> <b>Wilmington, DE 19899</b>	ATTORNEYS (IF KNOWN) <b>Louis J. Rizzo, Jr., Esquire (ID #3374) (302) 652-3611</b> <b>Reger Rizzo Kavulich &amp; Darnall LLP</b> <b>1001 Jefferson Plaza, Suite 202</b> <b>Wilmington, DE 19801</b>												
<b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)  <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> 1 U.S. Government   <input type="checkbox"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="checkbox"/> 3 Federal Question   <input checked="" type="checkbox"/> 4 Diversity          (Indicated Citizenship of Parties in Item III)         </div> </div>	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <table style="width: 100%; font-size: small;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place Of Business in This State</td> <td style="width: 33%;">PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place Of business in Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place Of Business in This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place Of business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place Of Business in This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4										
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place Of business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5										
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										
<b>IV. CAUSE OF ACTION</b> (CITE THE U S CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUES UNLESS DIVERSITY) <b>Title VII</b>													
<b>V. NATURE OF SUIT</b> (PLACE AN x IN ONE BOX ONLY)													

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument  <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Midicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans  (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<div style="display: flex;"> <div style="width: 48%;"> <b>PERSONAL INJURY</b>  <input type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability   <input type="checkbox"/> 320 Assault, Libel &amp; Slander  <input type="checkbox"/> 330 Federal Employers' Liability  <input type="checkbox"/> 340 Marine  <input type="checkbox"/> 345 Marine Product Liability   <input type="checkbox"/> 350 Motor Vehicle  <input type="checkbox"/> 355 Motor Vehicle Product Liability           </div> <div style="width: 48%;"> <b>PERSONAL INJURY</b>  <input type="checkbox"/> 362 Personal Injury-- Med Malpractice  <input type="checkbox"/> 365 Personal Injury -- Product Liability   <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b>  <input type="checkbox"/> 370 Other Fraud  <input type="checkbox"/> 371 Truth in Lending  <input type="checkbox"/> 380 Other Personal Property Damage  <input type="checkbox"/> 385 Property Damage Property Liability           </div> </div>	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws  <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation  <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b>  <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI  <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc.  <input type="checkbox"/> 460 Deportation  <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange  <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters  <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statues <input type="checkbox"/> Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure  <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment  <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence  Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right		

<b>VI. ORIGIN</b> (PLACE AN x IN ONE BOX ONLY)					Appeal to District
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 7 Judge from Magistrate Judgment

<b>VII. REQUESTED IN COMPLAINT:</b>	CHECK IF THIS IS A <b>CLASS ACTION</b>	<b>DEMAND \$</b>	Check YES only if demanded in complaint:
<input type="checkbox"/> UNDER F.R.C.P 23			<b>JURY DEMAND:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

<b>VIII. RELATED CASE(S)</b> (See instructions)	
<b>IF ANY</b>	JUDGE <u>Honorable Sue L. Robinson</u> DOCKET NUMBER <u>07-346</u>

DATE July 25, 2007	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Louis J. Rizzo, Jr., Esquire</u>
UNITED STATES DISTRICT COURT	